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Affecting Horry County

Addition of twenty (20) psychiatric beds for a total of twenty-eight (28) licensed psychiatric beds.

Lighthouse of Conway – Acute Care

Conway, South Carolina

Project Cost: \$1,034,746

Affecting Lexington County

Construction of a 5-story bed tower and the addition of 54 inpatient acute care beds.

Lexington Medical Center

West Columbia, South Carolina

Project Cost: \$36,097,582

Affecting Union County

Replacement of the existing Single-Slice Computed Tomography (CT) scanner with a Multi-Slice CT scanner.

Wallace Thomson Hospital

Union, South Carolina

Project Cost: \$1,242,199

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF AMENDMENT TO THE SOUTH CAROLINA AIR QUALITY IMPLEMENTATION PLAN CHAPTER 61

Statutory Authority: 1976 Code Section 48-1-10, *et seq.*

SOUTH CAROLINA TRANSPORTATION CONFORMITY MEMORANDUM OF AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to implement Section 176 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), the related requirements of 23 U.S.C. 109(j), and regulations under 40 Code of Federal Regulations (CFR) Part 93, Subpart A with respect to the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation (USDOT) and by metropolitan planning organizations (MPOs), the South Carolina Department of Transportation (SCDOT) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This MOA sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed according to Part A, Section 110 and Part D of the CAA.

This is a Memorandum of Agreement (MOA) concerning the criteria and procedures for the determination of the conformity of transportation plans, programs and projects in South Carolina areas designated as non-attainment or maintenance for National Ambient Air Quality Standards (NAAQS), pursuant to the Clean Air Act Amendments of 1990.

The Parties to this MOA are as follows: each of the Metropolitan Planning Organizations (MPO) as described in Exhibit 1, South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Transportation (SCDOT), Federal Highway Administration South Carolina Division Office (FHWA), the Federal Transit Administration (FTA), the United States Environmental Protection Agency Region 4 (EPA), and local publicly-owned transit agencies, not represented by aforementioned MPOs, in non-attainment and maintenance areas.

WHEREAS, the Clean Air Act Amendments of 1990 (CAAA) require the State of South Carolina to submit a revision to the *South Carolina Air Quality Implementation Plan*, also known as the State Implementation Plan (SIP) containing the criteria and procedures for determining the conformity of transportation plans, programs and projects in areas designated as air quality non-attainment or maintenance in order to conform to the purpose of the SIP to meet national ambient air quality standards; and,

WHEREAS, the CAAA (specifically Sections 121, 174, and 176), 40 Code of Federal Regulations (CFR), Part 93, Subpart A, Title 23 United States Code (U.S.C.) 134, and 23 CFR Part 450 Subpart C, require intergovernmental consultation before findings of conformity for the plans, programs and projects are made, and for the development and submittal of applicable implementation plan revisions; and,

WHEREAS, the CAAA in Section 110(a)(2)(A) and (E) requires SIP revisions to be enforceable under state law, and 40 CFR § 51.390(d) requires that, “in order for EPA to approve the implementation plan revision submitted to EPA and DOT under this Subpart, the plan must address all requirements of Part 93, Subpart A of this chapter in a manner which gives them full legal effect”; and,

WHEREAS, the MPOs were created by federal highway and transit statutes for the spending of federal highway or transit funds within the MPO boundaries and have the authority for planning, programming, and coordination of federal highway and transit investments; and,

WHEREAS, the DHEC has been designated pursuant to South Carolina law and by the EPA as the state air quality planning agency and as the state administrator of the approved Air Quality Program for the State of South Carolina; and,

WHEREAS, the SCDOT has been designated as the State transportation planning agency under South Carolina law to carry out the statewide transportation planning process required by Title 23 U.S.C. 135, and has the authority for planning, programming, and coordination of federal highway and transit investments in areas that are not within the MPO boundaries; and,

WHEREAS, the FHWA and FTA are agencies of the United States Department of Transportation and are responsible for review and approval of the conformity determinations prepared for compliance with 23 U.S.C. and 49 U.S.C., respectively; and,

WHEREAS, the EPA is responsible for providing comment on conformity determinations; and,

WHEREAS, the local publicly-owned transit agencies in non-attainment or maintenance areas shall be responsible for providing support on transportation planning activities to the other Parties of this MOA.

NOW, THEREFORE, it is hereby agreed:

The Parties shall cooperatively support and implement the conformity criteria and procedures contained herein in order to ensure that the plans, programs and projects adopted by the Parties conform to the purpose of the SIP to meet national ambient air quality standards.

It is further agreed and understood by each Party that:

1. The conformity of plans, programs, and projects funded under Title 23 United States Code and the Federal Transit Act shall be determined pursuant to the CAAA and as provided in 40 CFR Part 93 Subpart A, as amended, and pursuant to the “South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects”, a copy of which is attached as Exhibit 2.

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2. This MOA including Exhibit 1 and Exhibit 2 will constitute a revision to the South Carolina SIP required by Section 176 of the CAAA and will govern conformity determinations in the State of South Carolina.

3. Execution of this MOA by each Party shall be by signature of each Party's representative.

4. The provisions of this MOA shall be implemented through appropriate procedures, resolutions, or other means, in order to comply with the requirements of all Federal and State laws and regulations relating to the determination of conformity and the development of applicable implementation plan revisions. This MOA defines and delineates the roles, processes, and responsibilities of each signatory as provided in Exhibits 1 and 2 made part of this MOA.

Agreed to this 25th day of April, 2002:

The Columbia Area Transportation Study
Metropolitan Planning Organization

Signed by Walton J. McLeod, III.
Walton J. McLeod, III, Chairman
Board of Directors
Central Midlands Council of Governments

Agreed to this 4th day of April, 2002:

Greenville Area Transportation Study
Metropolitan Planning Organization

Signed by F. James Forbes.
F. James Forbes, Director
Greenville County Planning Commission

Agreed to this 8th day of April, 2002:

The Spartanburg Area Transportation Study
Metropolitan Planning Organization

Signed by Karen Floyd.
Karen Floyd, Chair
Spartanburg Area Transportation Study Policy Committee

Agreed to this 5th day of April, 2002:

Augusta Regional Transportation Study
Metropolitan Planning Organization

Signed by G A Patty.
George A. Patty, Executive Director
Augusta-Richmond County Planning Commission

Agreed to this _____ day of _____, 2002:

Augusta Regional Transportation Study
Metropolitan Planning Organization

Signed by Ronnie Young _____.
Ronnie Young, Chairman
Aiken County Council

APPROVED
AS TO FORM AND CONTENT
BELL, SURASKY & BROWN, P.A.
AIKEN COUNTY
BY x 6/19 x

Agreed to this 3rd day of June , 2002:

Rock Hill/Fort Mill Area Transportation Study
Metropolitan Planning Organization

Signed by C. Michael Short _____.
C. Michael Short, Chairman
Rock Hill/Fort Mill Area Transportation Study Policy Committee

Agreed to this 23rd day of April , 2002:

Florence Area Transportation Study
Metropolitan Planning Organization

Signed by Elizabeth M. Matthews _____.
Elizabeth Matthews, Planning Director
Florence County

Agreed to this 7th day of April , 2002:3

Anderson Area Transportation Study
Metropolitan Planning Organization

Signed by Richard A. Shirley _____.
Mayor Richard A. Shirley, Chairman
Anderson Area Transportation Study

Agreed to this 2nd day of April , 2002:

Charleston Area Transportation Study
Metropolitan Planning Organization

Signed by R. Keith Summey _____.
R. Keith Summey, Chairman,
Charleston Area Transportation Study Policy Committee

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Agreed to this 8th day of April, 2002:

Grand Strand Area Transportation Study
Metropolitan Planning Organization

Signed by Tomas G. Keegan.
Representative Tomas G. Keegan, Chairman
Grand Strand Area Transportation Study Policy Committee

Agreed to this 6 day of June, 2002:

Sumter Area Transportation Study
Metropolitan Planning Organization

Signed by Joseph T. McElveen.
Mayor Joseph T. McElveen, Jr., Chairman
Sumter Area Transportation Study

Agreed to this 26 day of March, 2002:

The South Carolina Department of Health and Environmental Control

Signed by R. Lewis Shaw.
R. Lewis Shaw, P.E., Deputy Commissioner
Environmental Quality Control

Agreed to this 13 day of February, 2002: **3**

Recommended By

Signed by D. H. Freeman.
D. H. Freeman, State Highway Engineer

The South Carolina Department of Transportation

Signed by Elizabeth Mabry.
Elizabeth Mabry, Executive Director

Agreed to this 9th day of April, 2002:

Federal Highway Administration South Carolina Division Office

Signed by Robert L. Lee.
Robert L. Lee, Division Administrator

Agreed to this 29th day of April, 2002:

The Federal Transit Administration

Signed by Jerry A. Franklin

Jerry Franklin, Region Administrator

Agreed to this 31st day of May, 2002:

The United States Environmental Protection Agency
Region 4 Office

Signed by A. Stanley Meiburg for

James I. Palmer, Jr., Administrator
EPA Region 4

EXHIBIT 1

Description of Metropolitan Planning Organizations

Columbia MPO - That portion of Lexington, Richland, and Calhoun counties distinctly defined and known as the Columbia Area Transportation Study (COATS).

Greenville MPO - That portion of Greenville, Laurens, Pickens, and Spartanburg counties distinctly defined and known as the Greenville Area Transportation Study (GRATS).

Spartanburg MPO - That portion of Spartanburg County distinctly defined and known as the Spartanburg Area Transportation Study (SPATS).

Augusta-Aiken MPO - That portion of Richmond and Columbia counties in the State of Georgia and that portion of Aiken County in the State of South Carolina distinctly defined and known as the Augusta Regional Transportation Study (ARTS).

Rock Hill/Fort Mill MPO - That portion of York County distinctly defined and known as the Rock Hill/Fort Mill Area Transportation Study (RFATS).

Florence MPO - That portion of Florence and Darlington counties distinctly defined and known as the Florence Area Transportation Study (FLATS).

Anderson MPO - That portion of Anderson County distinctly defined and known as the Anderson Area Transportation Study (ANATS).

Charleston MPO - That portion of Berkeley, Charleston and Dorchester counties distinctly defined and known as the Charleston Area Transportation Study (CHATS).

Grand Strand MPO - That portion of Horry and Georgetown counties distinctly defined and known as the Grand Strand Area Transportation Study (GSATS).

Sumter MPO - That portion of Sumter County distinctly defined and known as the Sumter Area Transportation Study (SUATS).

The above descriptions are intended to distinguish legal boundaries only. The MOA and associated exhibits are not valid for any portions outside of South Carolina.

EXHIBIT 2

South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects

A. General

Pursuant to 40 CFR § 93.105, this document provides for interagency consultation (federal, state, and local), resolution of conflicts and public consultation procedures. Consultation procedures shall be undertaken prior to making transportation conformity determinations and prior to adopting applicable *South Carolina Air Quality Implementation Plan*, also known as the State Implementation Plan (SIP) revisions.

B. Interagency Consultation Procedures: General Procedures Factors

1. Representatives of the MPOs, the South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Transportation (SCDOT), and local publicly-owned transit agencies, not associated with the MPOs, shall collectively undertake an interagency consultation process in accordance with the procedures outlined herein with regional representatives of the United States Environmental Protection Agency (EPA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA) on the development of the applicable implementation plan, the list of transportation control measures (TCM) in the applicable implementation plan under Title 23 CFR § 450.314, the transportation plan (TP), the Transportation Improvement Program (TIP), any revisions to the preceding documents, and associated conformity determinations.

2. For the purposes of regular consultation, the affected agencies shall include:

- a. MPOs (Metropolitan Planning Organizations) in non-attainment or maintenance areas;
- b. DHEC (South Carolina Department of Health and Environmental Control);
- c. SCDOT (South Carolina Department of Transportation);
- d. FHWA (Federal Highway Administration South Carolina Division Office);
- e. FTA (Federal Transit Administration);
- f. EPA Region 4 (Environmental Protection Agency); and,
- g. Local publicly-owned transit agencies, not associated with the MPOs, in non-attainment or maintenance areas.

3. The MPO, as the lead transportation planning agency, shall have the primary responsibility in its designated non-attainment or maintenance area for developing the TP, the TIP, and project-level technical analyses by employing travel-demand modeling techniques, acquiring all necessary data, and coordinating these activities with agencies specified in Subsection B.2. The MPO shall work in consultation with SCDOT and local publicly-owned transit agencies, not associated with the MPOs, in developing these documents. The MPO shall be responsible for providing written notification of all scheduled meetings concerning transportation and related air quality issues to each of the affected agencies. Notification shall not be less than seven (7) calendar days prior to the meeting and any scheduling changes shall be coordinated in a timely manner. When the MPO is not the lead transportation planning agency, SCDOT shall have the same responsibilities as the MPO in fulfilling all applicable provisions of the consultative process and transportation conformity determinations.

4. The MPO shall notify each affected agency of all transportation planning activities for all federal and nonfederal projects that are regionally significant and therefore need to be included in regional emissions analysis when estimating emissions from mobile sources in non-attainment and maintenance areas.

5. DHEC, as the state air quality lead agency, shall have primary responsibility for developing transportation-related state implementation plans (SIP), air quality modeling demonstrations, emissions inventories, and related activities. Transportation-related SIPs shall be prepared by DHEC with the assistance of the affected agencies. DHEC shall distribute documents to all affected agencies for review and comment. DHEC shall schedule public hearings to receive public comment on transportation-related SIPs. Comments and responses to comments shall be included in applicable SIP submittals to EPA.

6. For purposes of regular consultation, organizational representation shall be defined as follows:

- a. MPO, Executive Director or designee;
- b. DHEC, Environmental Quality Control Deputy Commissioner or designee;
- c. SCDOT, Executive Director or designee;
- d. FWHA, Division Administrator or designee;
- e. FTA, Director of Office of Program Development or designee;
- f. EPA, Regional Administrator or designee; and,
- g. Local publicly-owned transit agencies.

7. Other specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

- a. The MPO, or SCDOT if there is no MPO for the area, shall be responsible for:
 - i. developing transportation plans, projects, and TIPs;
 - ii. evaluating the transportation impacts of TCMs;
 - iii. developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to DHEC for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects;
 - iv. monitoring of regionally significant projects;
 - v. developing system- or facility- based or other programmatic (non-regulatory) TCMs;
 - vi. providing technical and policy input on emissions budgets;
 - vii. performing transportation modeling for the purposes of generating the TIP or projects, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments; and,
 - viii. developing draft and final conformity determination documents for all transportation plans, programs, and projects.
- b. DHEC shall be responsible for:
 - i. developing emissions inventories;
 - ii. developing emissions budgets;
 - iii. air quality modeling;
 - iv. attainment demonstrations;
 - v. control strategy implementation plan revisions;
 - vi. regulatory TCMs; and,
 - vii. motor vehicle emissions factors.
- c. The SCDOT shall be responsible for:
 - i. developing statewide transportation plans and Statewide Transportation Improvement Programs (STIPs);
 - ii. providing technical input on proposed revisions to motor vehicle emissions factors;
 - iii. distributing draft and final project environmental documents to other agencies;

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- iv. convening air quality technical review meetings on specific projects when requested by other agencies, or as needed;
- v. developing updated motor vehicle emissions estimates and projections; and,
- vi. choosing and evaluating transportation models and associated methods and assumptions to be used in hot spot and regional emissions analyses.

d. The FHWA and FTA shall be responsible for:

- i. assuring timely action on final findings of conformity, after consultation with other agencies as provided in this paragraph and 40 CFR § 93.105;
- ii. providing guidance on conformity and the transportation planning process to agencies in interagency consultation; and,
- iii. review, comment, and approval of conformity determinations.

e. The EPA shall be responsible for:

- i. reviewing and approving updated motor vehicle emissions factors;
- ii. providing guidance on conformity criteria and procedures to agencies in interagency consultation;
- iii. approving emission budgets and state implementation revisions (including TCMs);
- iv. providing modeling and emission inventory development assistance to the SCDOT, DHEC, and MPO; and,
- v. providing comments on the regional emissions analyses and conformity determinations of transportation plans and TIPs.

f. The local publicly-owned transit agencies, not associated with the MPOs, in non-attainment or maintenance areas shall be responsible for:

- i. supporting and conducting, as necessary, the transportation planning activities for public transportation service including transit operations; and,
- ii. providing the MPO with the information necessary for annual endorsement of Federal Transit Administration programs.

8. Before adoption and approval of conformity analyses prepared for plans, TIPs, and projects, the MPO and/or SCDOT, as the lead transportation planning agency, shall distribute a final draft of the documents, including supporting technical materials, to the affected agencies for review and comments. Affected agencies shall review and submit written comments to the lead agency within thirty (30) calendar days. The lead agency shall respond to written comments made by the affected agencies on plans, TIPs, projects, or SIPs in writing within thirty (30) calendar days. Comments and responses to comments shall be distributed for review by all affected agencies. Following resolution of all significant issues, final documents shall be revised accordingly and submitted to the designated lead agency for formal adoption and approval.

9. Meetings of the group of affected agencies shall convene for the specific purpose of considering issues with regard to the conformity of transportation plans, TIPs, and projects with the transportation conformity SIP. The frequency of these meetings shall be determined jointly by the specified transportation and air quality lead agencies. Affected agencies shall meet on a regular basis, at least quarterly, unless the lead agencies determine there is a need for an earlier meeting or, alternatively, that there is no need for the regularly scheduled meeting. Based upon comments received, the lead agency may schedule a meeting where consultation with all affected agencies concerned can be accomplished simultaneously for the resolution of comments and issues. Meeting agendas are the responsibility of the designated lead agency.

10. Where TCMs are to be included in applicable SIPs in urbanized non-attainment or maintenance areas, a list of TCMs shall be selected and developed by the MPO in cooperation with other affected agencies. This list of TCMs shall be distributed to all cooperating agencies by DHEC after its review and consultation with the MPO. The list of TCMs shall be made available for inspection or copying for all interested persons and agencies.

C. Interagency Consultation Procedures: Specific Processes

1. An interagency consultation process in accordance with Subsection B involving the MPO, DHEC, SCDOT, EPA, and FHWA/FTA shall be undertaken for the following:

a. evaluating and choosing a model(s) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

b. for purposes of regional emissions analysis, the MPO shall actively consult with the affected agencies to determine which minor arterials and other transportation projects should be considered "regionally significant" projects (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. The MPO shall consider the views of each agency that comments or responds in writing prior to any final action on these issues. If the MPO receives no comments within thirty (30) calendar days, the MPO may assume consensus by the affected agencies;

c. the MPO shall submit a list of exempt projects to affected agencies to evaluate whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93 Subpart A (see Sections 93.126 and 127) should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason. The MPO shall allow thirty (30) calendar days for comments;

d. the MPO and/or SCDOT, in consultation with the affected agencies shall make a determination, as required by 40 CFR § 93.113(c)(1), whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

e. the MPO and/or SCDOT, in consultation with the affected agencies, shall identify, as required by 40 CFR § 93.123(b), projects located at sites in PM_{10} non-attainment areas that have vehicle and roadway emission and dispersion characteristics that are essentially identical to those at sites which have violations verified by monitoring and, therefore, require quantitative PM_{10} hot-spot analysis;

f. the MPO shall notify the affected agencies of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR § 93.126 or 93.127 and allow a thirty (30) day comment period; and,

g. the SCDOT, in consultation with the affected agencies, shall cooperatively choose the appropriate conformity test(s) and methodologies for use in isolated rural non-attainment and maintenance areas, as required by 40 CFR § 93.109(g)(2)(iii) and for any non-attainment or maintenance area for which an emissions budget has not been developed and approved.

2. An interagency consultation process in accordance with Subsection B, involving the MPO, DHEC and SCDOT shall be undertaken for the following:

a. DHEC, in cooperation with the MPO and SCDOT, shall evaluate events that will trigger new conformity determinations in addition to those triggering events established in 40 CFR § 93.104. DHEC may require a new conformity determination in the event of any unforeseen circumstances; and,

b. the MPOs shall share cooperatively the responsibilities of conducting conformity determinations on transportation activities which cross the borders of two or more MPOs' non-attainment or maintenance areas.

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The MPOs will enter into a memorandum of agreement which will define the effective boundary and the respective responsibilities for each MPO for regional emissions analysis. Adjacent MPOs of non-attainment or maintenance areas shall share information concerning air quality modeling assumptions and emission rates that affect both areas.

3. For the purposes of determining the conformity of all projects outside the metropolitan planning area, but within the non-attainment or maintenance area, the MPO shall enter into a memorandum of agreement involving the MPO and SCDOT for cooperative planning and analysis of projects.

4. a. An interagency consultation process in accordance with Subsection B involving the MPO, DHEC, SCDOT, and recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.

b. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the MPO within thirty (30) calendar days of acknowledgment of each project for which alternatives have been identified through the National Environmental Policy Act (NEPA) process, and in particular, any preferred alternative that may be a regionally significant project.

c. In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming plan and TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of 40 CFR § 93.121.

d. For the purposes of the procedures outlined herein and 40 CFR § 93.121, the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

5. The MPO, in accordance with Subsections B and C.4, and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, shall cooperatively assume the location and design concept and scope of projects that are disclosed to the MPO as required by Subsection C.4, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR § 93.122.

6. The MPO, in accordance with Subsection B, shall notify DHEC, SCDOT, and local transportation agencies not associated with the MPOs, and shall seek their input for the design, schedule, and funding of

research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

7. Within fifteen (15) calendar days subsequent to approval and adoption of final documents, including transportation plans, TIPs, conformity approvals, applicable implementation plans and implementation plan revisions, the lead agency; that is, either DHEC, the MPO, or SCDOT, shall provide copies of such documents and supporting information to all affected agencies.

D. Resolving Conflicts

1. Any conflicts among state agencies or between state agencies and an MPO shall be escalated to the Governor of South Carolina (Governor) if the conflict cannot be resolved by the heads of the involved agencies.

2. In the event that the MPO or SCDOT determines that every effort has been made to address DHEC concerns and no further progress is possible, the MPO or SCDOT shall notify the representative of DHEC, as defined in Subsection B.6., in writing to this effect. Section 93.105(d) of 40 CFR shall be cited by the MPO or SCDOT in any notification of a conflict which may require action by the Governor.

3. DHEC has fourteen (14) calendar days to appeal a proposed determination of conformity (or other policy decision under this agreement) to the Governor after the MPO or SCDOT has notified DHEC of the resolution of all comments on such proposed determination of conformity or policy decision. Such fourteen (14) day period shall commence when the MPO or SCDOT has confirmed receipt by DHEC of the resolution of DHEC's comments. If DHEC appeals to the Governor, the final conformity determination must have the concurrence of the Governor. DHEC must provide notice of any appeal under this Subsection to the MPO and SCDOT. If DHEC does not appeal to the Governor within fourteen (14) calendar days, the MPO or SCDOT may proceed with the final conformity determination.

4. The Governor may delegate the role of hearing any such appeal under this Subsection, but not to the head or staff of DHEC, SCDOT, a state transportation commission or board, or an MPO.

E. Public Consultation Procedures

Consistent with the requirements of 23 CFR § 450.316(b), relating to public involvement, affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process that provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all transportation plans and TIPs. Any charges imposed for public inspection and copying of conformity-related materials shall be consistent with South Carolina Title 30 Chapter 4 Freedom of Information Act. In addition, any such agency must specifically address in writing any public comments claiming that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. The opportunity for public involvement provided under this Subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this Subsection, without regard to whether the DOT has certified any process under 23 CFR 450.

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EXHIBIT 3

Incorporating into the *South Carolina Air Quality Implementation Plan* as Criteria and Procedures for the Determination of Conformity

The Parties to the MOA are as follows: each of the Metropolitan Planning Organizations (MPO) as described in Exhibit 1, South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Transportation (SCDOT), Federal Highway Administration South Carolina Division Office (FHWA), the Federal Transit Administration (FTA), the United States Environmental Protection Agency Region 4 (EPA), and local publicly-owned transit agencies, not represented by aforementioned MPOs, in non-attainment and maintenance areas.

The Parties to the MOA agree that: “The conformity of plans, programs, and projects funded under Title 23 United States Code and the Federal Transit Act shall be determined pursuant to the CAAA and as provided in 40 CFR Part 93 Subpart A, as amended, and pursuant to the “South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects,” a copy of which is attached as Exhibit 2.”

The Parties to the MOA agree to conduct transportation conformity determinations in accordance with the provisions of the following sections of 40 CFR Part 93 Subpart A, as amended:

- 93.101 - Definitions.
- 93.102 - Applicability.
- 93.103 - Priority.
- 93.104 - Frequency Of Conformity Determinations.
- 93.106 - Content Of Transportation Plans.
- 93.109 - Criteria And Procedures For Determining Conformity Of Transportation Plans, Programs, And Projects: General.
- 93.110 - Criteria And Procedures: Latest Planning Assumptions.
- 93.111 - Criteria And Procedures: Latest Emissions Model.
- 93.112 - Criteria And Procedures: Consultation.
- 93.113 - Criteria And Procedures: Timely Implementation Of TCMs.
- 93.114 - Criteria And Procedures: Currently Conforming Transportation Plan And TIP.
- 93.115 - Criteria And Procedures: Projects From A Plan And TIP.
- 93.116 - Criteria And Procedures: Localized CO And PM₁₀ Violations (Hot Spots).
- 93.117 - Criteria And Procedures: Compliance With PM₁₀ Control Measures.
- 93.118 - Criteria And Procedures: Motor Vehicle Emissions Budget.
- 93.119 - Criteria And Procedures: Emission Reductions In Areas Without Motor Vehicle Emissions Budgets.
- 93.120 - Consequences Of Control Strategy Implementation Plan Failures.
- 93.121 - Requirements For Adoption Or Approval Of Projects By Other Recipients Of Funds Designated Under Title 23 U.S.C. Or The Federal Transit Laws.
- 93.126 - Exempt Projects.
- 93.127 - Projects Exempt From Regional Emissions Analyses.

Title 40 Code Of Federal Regulations (CFR)

Chapter I - Environmental Protection Agency

Part 93 - Determining Conformity of Federal Actions to State or Federal Implementation Plans

Subpart A - Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws

40 CFR § 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

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FTA means the Federal Transit Administration of DOT.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106.

Hot-spot analysis is an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance plan means an implementation plan under section 175A of the CAA, as amended.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Project means a highway project or transit project.

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

Standard means a national ambient air quality standard.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

Written commitment for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

[58 FR 62234, Nov. 24, 1993; 60 FR 57179, Nov. 14, 1995; 62 FR 43780, August 15, 1997]

40 CFR § 93.102 Applicability.

(a) Action applicability.

(1) Except as provided for in paragraph (c) of this section or § 93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this subpart for individual projects which are not FHWA/FTA projects. However, § 93.121 applies to such projects if they are regionally significant.

(b) Geographic applicability. The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(2) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

(ii) NO_x in NO₂ areas; and

(iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

(c) Limitations.

(1) Projects subject to this subpart for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

(d) Grace period for new nonattainment areas. For areas or portions of areas which have been continuously designated attainment or not designated for any standard for ozone, CO, PM₁₀ or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply with respect to that standard for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

[58 FR 62234, Nov. 24, 1993; 60 FR 44762, Aug. 29, 1995; 60 FR 57179, Nov. 14, 1995; 62 FR 43780, August 15, 1997; 65 FR 18911, Apr. 10, 2000; 67 FR 50808, Aug. 6, 2002]

40 CFR § 93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.104 Frequency Of Conformity Determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) Frequency of conformity determinations for transportation plans.

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(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.126 or § 93.127.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 93.126 and 93.127. Otherwise, the existing conformity determination for the TIP will lapse.

(d) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

(e) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPs must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to § 93.118(e) and can be used for transportation conformity purposes;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, Aug. 15, 1997; 67 FR 50808, Aug. 6, 2002]

40 CFR § 93.106 Content Of Transportation Plans.

(a) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart;

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by § 93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of § 93.109 through 93.119.

(d) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.109 Criteria And Procedures For Determining Conformity Of Transportation Plans, Programs, And Projects: General.

(a) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this subpart are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1 - CONFORMITY CRITERIA

All Actions at all times:

Sec. 93.110	Latest planning assumptions
Sec. 93.111	Latest emissions model
Sec. 93.112	Consultation

Transportation Plan:

Sec. 93.113(b)	TCMs
Sec. 93.118 or Sec. 93.119	Emissions budget or Emission reduction

TIP:

Sec. 93.113(c)	TCMs
Sec. 93.118 or Sec. 93.119	Emissions budget or Emission reduction

Project (From a Conforming Plan and TIP):

Sec. 93.114	Currently conforming plan and TIP
Sec. 93.115	Project from a conforming plan and TIP
Sec. 93.116	CO and PM ₁₀ hot spots
Sec. 93.117	PM ₁₀ control measures

Project (Not From a Conforming Plan and TIP):

Sec. 93.113(d)	TCMs
Sec. 93.114	Currently conforming plan and TIP
Sec. 93.116	CO and PM ₁₀ hot spots
Sec. 93.117	PM ₁₀ control measures
Sec. 93.118 or Sec. 93.119	Emissions budget or Emission reduction

(c) Ozone nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NOX, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NOX. The implementation plan will be considered to establish a motor vehicle emissions budget for NOX if the implementation plan or plan submission contains an explicit NOX motor vehicle emissions budget that is intended to act as a ceiling on future NOX emissions, and the NOX motor vehicle emissions budget is a net reduction from NOX emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:

(i) The emission reduction tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

(i) The emission reduction tests as required by § 93.119;

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(ii) The budget test as required by § 93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(d) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by § 93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by § 93.116(b).

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (d)(4) of this section, in CO nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(i) The emission reduction tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).

(e) PM10 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in PM10 nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM10 nonattainment or maintenance areas must satisfy the hot spot test required by § 93.116(a).

(2) In PM10 nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM10 nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(iii) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) NO2 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in NO2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In NO2 nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO2 nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is

no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(g) Isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of § 93.110, 93.111, 93.112(2)(ii), 93.113(d), 93.116, and 93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of § 93.116(b) ("Localized CO and PM10 violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c) through (f) of this section, with the following modifications:

(i) When the requirements of § 93.118 and 93.119 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(ii) In isolated rural nonattainment and maintenance areas that are subject to § 93.118, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(A) § 93.118;

(B) § 93.119 (including regional emissions analysis for NOX in all ozone nonattainment and maintenance areas, notwithstanding § 93.119(d)(2)); or

(C) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in § 93.105(c)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.110 Criteria And Procedures: Latest Planning Assumptions.

(a) The conformity determination, with respect to all other applicable criteria in § § 93.111 through 93.119, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 93.105.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.111 Criteria And Procedures: Latest Emissions Model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.112 Criteria And Procedures: Consultation.

Conformity must be determined according to the consultation procedures in this subpart and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by § 51.390 of this chapter is fully approved by EPA, the conformity determination must be made according to § 93.105(a)(2) and (e) and the requirements of 23 CFR part 450.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.113 Criteria And Procedures: Timely Implementation Of TCMs.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.114 Criteria And Procedures: Currently Conforming Transportation Plan And TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in § 93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

[58 FR 62234, Nov. 24, 1993; 60 FR 57179, Nov. 14, 1995; 62 FR 43780, August 15, 1997]

40 CFR § 93.115 Criteria And Procedures: Projects From A Plan And TIP.

(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of § 93.109(b) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 93.106 ("Content of transportation plans"), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 93.125(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(d) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

[58 FR 62234, Nov. 24, 1993; 60 FR 57179, Nov. 14, 1995; 62 FR 43780, August 15, 1997]

40 CFR § 93.116 Criteria And Procedures: Localized CO And PM10 Violations (Hot Spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

(b) This paragraph applies for CO nonattainment areas as described in § 93.109(d)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.117 Criteria And Procedures: Compliance With PM10 Control Measures.

The FHWA/FTA project must comply with PM10 control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM10 emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.118 Criteria And Procedures: Motor Vehicle Emissions Budget.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in § 93.109(c) through (g). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by § 93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in § 93.102(b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of § 93.122 and 93.105(c)(1)(i).

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(e) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must

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be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by § 93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy § § 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see § 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

[58 FR 62234, Nov. 24, 1993; 60 FR 57179, Nov. 14, 1995; 62 FR 43780, August 15, 1997]

40 CFR § 93.119 Criteria And Procedures: Emission Reductions In Areas Without Motor Vehicle Emissions Budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in § 93.109(c) through (g). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

(c) This criterion may be met in PM10 and NO2 nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by § 51.390 of this chapter defines the baseline emissions for a PM10 area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(d) Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NOX in ozone areas, unless the EPA Administrator determines that additional reductions of NOX would not contribute to attainment;

(3) CO in CO areas;

(4) PM10 in PM10 areas;

(5) Transportation-related precursors of PM10 in PM10 nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT; and

(6) NOX in NO2 areas.

(e) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(f) "Baseline" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in § 93.126 and projects exempt from regional emissions analysis as listed in § 93.127 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(g) "Action" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in § 93.126 and projects exempt from regional emissions analysis as listed in § 93.127 need not be explicitly considered):

(1) All facilities, services, and activities in the "Baseline" scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(h) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c) of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.120 Consequences Of Control Strategy Implementation Plan Failures.

(a) Disapprovals.

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to § 93.109.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(b) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.121 Requirements For Adoption Or Approval Of Projects By Other Recipients Of Funds Designated Under Title 23 U.S.C. Or The Federal Transit Laws.

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of § 93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to § 93.109(g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of § 93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP).

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.126 Exempt Projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2 - EXEMPT PROJECTS

Safety

Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.

Guardrails, median barriers, crash cushions.
 Pavement resurfacing and/or rehabilitation.
 Pavement marking demonstration.
 Emergency relief (23 U.S.C. 125).
 Fencing.
 Skid treatments.
 Safety roadside rest areas.
 Adding medians.
 Truck climbing lanes outside the urbanized area.
 Lighting improvements.
 Widening narrow pavements or reconstructing bridges (no additional travel lanes).
 Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
 Purchase of support vehicles.
 Rehabilitation of transit vehicles \1\.
 Purchase of office, shop, and operating equipment for existing facilities.
 Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
 Construction or renovation of power, signal, and communications systems.
 Construction of small passenger shelters and information kiosks.
 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet \1\.
 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
 Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
 Planning and technical studies.
 Grants for training and research programs.
 Planning activities conducted pursuant to titles 23 and 49 U.S.C.
 Federal-aid systems revisions.
 Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
 Noise attenuation.
 Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).
 Acquisition of scenic easements.
 Plantings, landscaping, etc.
 Sign removal.
 Directional and informational signs.
 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
 Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

Note: \1\ In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

40 CFR § 93.127 Projects Exempt From Regional Emissions Analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3 - PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

[58 FR 62234, Nov. 24, 1993; 62 FR 43780, August 15, 1997]

Copies of the signed Memorandum of Agreement may be obtained by contacting Dennis Camit at the South Carolina Department of Health and Environmental Control, Division of Air Planning, Development, and Outreach, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-4284.

DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 6-9-60(C) of the 1976 Code of Laws of South Carolina, as amended, the South Carolina Building Codes Council intends to review and adopt the following building codes for use within the state:

Mandatory codes will include:

International Building Code, 2003 Edition;
International Residential Code, 2003 Edition;
International Fire Code, 2003 Edition;
International Plumbing Code, 2003 Edition;
International Mechanical Code, 2003 Edition;
International Fuel Gas Code, 2003 Edition;
International Energy Conservation Code, 2003 Edition.